SYARIKAT JELETA BUMI SDN BHD & ANOR *a*

v.

NADARAJAH RAMASAMY & ORS

HIGH COURT MALAYA, KUALA LUMPUR *b*
AZMEL MAAMOR J
[CIVIL SUIT NO: S6-22-170-2002]
26 FEBRUARY 2003

CIVIL PROCEDURE: *Injunction - Interim injunction - Application for interim injunction to restrain demolition of defendants' quarters pending disposal of plaintiffs' suit for vacant possession - Whether defendants raised bona fide serious issues to be tried - Balance of justice or convenience - Requirement for defendants to provide guarantee* *c*

This was an application ('the instant application') by the defendants for an interim injunction to restrain the plaintiffs from demolishing the workers' quarters situated at a piece of agricultural land known as Ladang Bukit Tinggi ('LBT') pending the final disposal of the plaintiffs' action against the defendants for vacant possession of LBT. The 1st plaintiff claimed to be the beneficial owner of LBT whilst the 2nd plaintiff was the estate manager thereat. The current registered owner of LBT was one Highlands and Lowlands Bhd ('H&L') whilst its predecessor in title was one Barlow Boustead ('Boustead'). The 67 defendants herein were the estate workers of LBT who had been occupying the workers' quarters thereat for many years without interruption. The plaintiffs had requested the defendants to vacate LBT because they wanted to demolish the defendants' quarters to make way for a housing development project. The defendants refused and the plaintiffs sought and obtained, *inter alia*, an order (in default of appearance) for the possession of LBT. The quarters, however, were not demolished because the defendants managed to obtain an *ex parte* injunction to restrain the demolition exercise. The instant application was filed after the lapse of the said *ex parte* injunction. *d* *e* *f* *g*

Held:

[1] The defendants had raised several *bona fide* issues that were serious enough to merit a trial, namely: (i) that the plaintiffs had attempted to enforce their judgment for possession by demolishing the defendants' quarters at LBT without the leave of the court – and that this was contrary to O. 45 r. 3(2) of the Rules of the High Court 1980 ('RHC'); (ii) that despite not having entered judgment against 6 of the 67 defendants, the *h*

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plaintiffs attempted to enforce the judgment in default of appearance against all the defendants in contravention of O. 13 r. 4(2) of the RHC; and (iii) that the quarters as well as the land on which they were erected had been given by Boustead to the defendants and, therefore, the defendants were beneficial owners with a proprietary interest, or at least licensees, and not trespassers *per se*. (pp 430 h, 431 a-h & 432 a-e)

[2] The justice of the case or the balance of convenience was in favour of maintaining the *status quo, ie*, not demolishing the defendants' quarters pending the final disposal of the plaintiffs' action. This was because the defendants had been in occupation of the quarters and the land thereof for many years; they were poor people with many children and old folks, and the demolition of their quarters without the provision of an alternative place of dwelling would cause them undue hardship. In contrast, the inconvenience that could be caused to the plaintiffs would be much less serious; the land area occupied by the quarters was small and relatively insignificant and the plaintiffs could always start their housing development project on the other areas. Furthermore, the monetary compensation offered by the plaintiffs to the defendants for vacating their quarters was grossly inadequate for the purpose of finding alternative accommodation for themselves and their families. Also, the requirement that the defendants provide sufficient guarantee for any possible losses that the plaintiffs could incur as a result of a delay in their project could, in all the circumstances of the case, be dispensed with in the name of justice. (pp 432 e-h & 433 a-e)

[Defendants' application allowed; interim injunction granted.]

Case(s) referred to:

Chellapa K Kalimuthu v. Sime UEP Properties Bhd [1999] 3 CLJ 247 CA ***(refd)***

Keet Gerald Francis Noel John v. Mohd Nor Abdullah [1995] 1 CLJ 293 CA ***(foll)***

Trustees Leong San Tong Khoo Kongsi (Penang) Registered & Ors v. Poh Swee Siang [1987] 2 CLJ 302; [1987] CLJ (Rep) 404 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 13 r. 4(2), O. 45 r. 3(2)

Specific Relief Act 1950, s. 7

For the applicants/defendants - R Sivarasa (Charles Hector & Shamini Thiruselvam); M/s Charles Hector & Co

For the respondents/plaintiffs - Leong Wai Hong (Elaine Yap & Claudia Cheah); M/s Skrine

Reported by Gan Peng Chiang

JUDGMENT

Azmel Maamor J:

This is an application by defendants No. 3, 14, 18, 23, 26, 33, 38, 39, 41, 42, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 63, 64 and 66 for an interim injunction to restrain the 1st and 2nd plaintiffs and their agents from demolishing the houses and public facilities at Ladang Bukit Tinggi where the defendants are presently staying until this action had been fully disposed off.

It is essential to narrate the brief background of this case in order to understand and to give a proper perspective of this application. They are as follows. The 1st plaintiff claimed to be the beneficial owner of 2 lots of land with a total area of about 670 acres (Geran No. 24138 and Geran No. 43531) in the Mukim and District of Klang, Selangor. It was an agricultural estate called Ladang Bukit Tinggi. The current registered owner of the said land was Highlands and Lowlands Bhd. Previous to that the said land was owned by Barlow Boustead. The 2nd plaintiff was responsible for managing the estate and such function included all aspects relating to the employment of the plantation workers at the said land.

The 67 defendants were occupying the workers quarters built by the previous owner of the estate. The defendants had been allowed to stay in the said quarters for several generations, without any interruption by the owners. However, quite recently the new owner of the said land decided to develop the said land into a housing project. As such the owner had requested all the defendants to vacate the quarters so that the quarters could be demolished to make way for the development of the said land. But the defendants refused to vacate. As such on 18 February 2002 the plaintiffs filed an action against all the defendants seeking:

(i) Possession of the premises occupied by the 67 defendants; and

(ii) An injunction to restrain each of the defendants from remaining or continuing in occupation of the said premises.

On 26 March 2002 the plaintiffs succeeded in obtaining judgment in default of appearance against all the defendants except Defendants No. 23, 33, 38, 39, 41 and 49.

By a letter dated 5 April 2002 the 1st plaintiff informed all the defendants that the 1st plaintiff would be coming on 9 April 2002 to demolish all the defendants' houses. The demolition exercise was stayed as the defendants had obtained an *ex parte* injunction from the KL High Court, (Civil 2) on 8 April

2002 which was valid and lawful until 15 April 2002. On 16 April 2002 the defendants filed this injunction to restrain the plaintiffs from demolishing the defendants' houses (encl. 96).

In an application for an injunction the principles that the court has to follow are clearly laid down in the Court of Appeal case of *Keet Gerald Francis Noel John v. Mohd. Nor Abdullah & Ors.* [1995] 1 CLJ 293 at p. 305h-306g, where YA Gopal Sri Ram JCA said:

> A judge hearing an application for an interlocutory injunction should:
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> (1) ask himself whether the totality of the facts presented before him disclosed a *bona fide* serious issue to be tried. He must refrain from making any determination on the merits of the claim or any defence to it and identify with precision the issues raised and decide whether they are serious enough to merit a trial. If he finds that no serious question is disclosed, the relief should be refused. If, however, he finds that there are serious questions to be tried, he should move to the next step of his inquiry;
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> (2) having found that an issue had been disclosed that requires further investigation, he must consider where the justice of the case lies. He must take into account all relevant matters including the practical realities of the case before him and weigh the harm the injunction would produce by its grant, against the harm that would result from its refusal; and
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> (3) the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and to maintain the *status quo*. It is a judicial discretion capable of correction on appeal. A judge should briefly set out in his judgment the several factors that weighed in his mind when arriving at his conclusion.

It was therefore only appropriate for me to consider this application on the basis of the principles as laid out above in the *Keet Gerald* case.

Based on the above said principles, the 1st matter to be determined was whether the defendants/applicants had succeeded in disclosing a *bona fide* serious issue to be tried. Before me the defendants had put forward four *bona fide* issues to be tried.

Firstly, the defendants contended that the plaintiffs had contravened the provisions of O. 45 of Rules of the High Court 1980 when enforcing the judgment for possession of the immovable property. Under O. 45 r. 3(2) leave of court must be obtained first except where the judgment was made in a charge

action to which O. 83 applies. The instant case is not a charge action and as such the exception to the rule does not apply. In this case the plaintiff had issued letters to all the defendants informing them of its intention to demolish the houses occupied by the defendants without first obtaining leave of the court as required under O. 45 r. 3(2) RHC. Therefore such action is unlawful:

Secondly, the plaintiffs also had failed to comply with the provision of O. 13 r. 4 RHC, concerning execution of judgment obtained by default. Rule 4(2) of O. 13 states:

> Where there is more than one Defendant, judgement entered under this rule shall not be enforced against any Defendant unless and until judgment for possession has been entered against all the Defendants.

It was argued by the defendants that no judgment in default had been obtained against Defendants No. 23, 33, 38, 39, 41 & 49. As such it was premature to proceed with the execution of the judgment in default against the rest of the defendants.

In reply the plaintiff contended that the rules of civil procedure cannot form the basis of an issue of trial. Furthermore, the plaintiff's counsel contended that in this country the common law remedy of self help is still available and quoted the judgment of Hashim Yeop Sani SCJ (as he then was) in the case of *Trustees Leong San Tong Khoo Kongsi (Penang) Registered & Ors v. Poh Swee Siang* [1987] 2 CLJ 302; [1987] CLJ (Rep) 404 stated in his judgment as follows:

> ... S. 7 of the Specific Relief Act 1950 does not exclude the common law remedy of self help. This is a remedy which is always available unless expressly excluded.

In reply, the counsel for the defendants contended that s. 7 of the Specific Relief Act 1950 had been amended with the effect that the common law remedy of self help is no longer desirable. He referred to the case of *Chellapa a/l K. Kalimuthu (suing as public officer of Sri Maha Mariamman Temple Hicom, Shah Alam Selangor v. Sime UEP Properties Bhd.* [1999] 3 CLJ 247; where the learned High Court judge said:

> Finally, I think it is desirable to draw the attention of all concerned to s. 7(1) of the Specific Relief Act 1950 which forbids forcible eviction without a court order.

Thirdly, the defendants claimed that they and their predecessors are the beneficial owners of the houses and the land they now occupy and have always enjoyed quiet possession. The houses and land were given to them by the

previous owner of the said land ie, Barlow Boustead. The said the land was then purchased by Highlands & Lowlands Bhd. and finally bought over by the 1st plaintiff. The defendants were allowed to stay in their houses even after they have retired from working in the estate. Further in a meeting on 19 October 2001 between the plaintiff and NUPW it was stated in the minutes of meeting that "the workers will only vacate their quarters upon receiving their new low cost houses from the developer". And in another meeting on 6 November 2001 it was stated that "... the condition given by the state government is that the developer must build alternative housing for the workers before they could vacate their quarters". Hence with such evidence the defendants have shown that they have a claim to proprietary interest in the said land. This is a triable issue which should not be summarily dismissed without a trial.

Based on the circumstances as mentioned above, I was quite satisfied that the defendants had succeeded in showing the existence of a serious issue to be tried. In my view their claim for proprietary interest should not be summarily dismissed having regard to the fact that they had been occupying the premises for several generations without interference or interruption by the owners. One fact is indisputable. That is the defendants cannot be regarded as trespassers *per se*. At the very least they should be regarded as licensees. As such taking into consideration the whole facts and circumstances of this case I was of the view that the defendants had succeeded in establishing the existence of a triable issue which merits a full hearing.

I shall now proceed to consider the second step ie, to determine where the justice of the case lies. In my view the balance of convenience would tilt very much more in favour of the defendants who had been in occupation.of the premises for a number of generations. To ask them to vacate and cause the said quarters to be demolished would certainly cause the defendants great hardship, having regard to the fact that they are poor people with no alternative place to stay. They have children and old folks. In the circumstances it would only be proper and fair that until the whole matter relating to this case has been fully heard the defendants should be allowed to occupy the said premises. On the other hand the inconvenience likely to be caused to the plaintiff would not be as serious as compared to the misery befallen to the defendants. The area occupied by the defendants in relation to total area of 670 acres of the said land is insignificant. If the plaintiff really intended on commencing development on the said land immediately they are at liberty to do so by starting to develop the rest of the said land without the need to deprive the defendants from occupying their quarters. If the plaintiff must require the defendants to vacate their premises immediately then the plaintiff should provide them with

alternative accommodation as advised by the State Government of Selangor. I therefore held the view that the justice of the case is to have *status quo* maintained until the conclusion of the plaintiffs' claim in this suit.

As to the question whether compensation in monetary terms could be an alternative remedy, it was very clear to me that what the defendants needed was alternative accommodation for them and their families. From the facts adduced the amount of money that the plaintiffs had offered to the defendants was grossly inadequate for the defendants to obtain accommodation elsewhere. What the defendants require immediately after vacating their quarters were places for them to stay with members of their families.

On the question whether the defendants were capable of providing sufficient guarantee for the possible loss incurred by the plaintiff due to the delay in their commencing of the development of the said land as a result of the defendants' injunction, I was of the view that taking into consideration the total area of the said land (670 acres), the plaintiff could easily develop the said land in various phases. There is no need to commence development at the portion occupied by the defendants. In any case I was of the strong view that having regard to the whole circumstances of this case, the legal requirement for the defendants to provide adequate guarantee can surely be tempered with for the sake of justice in favour of the defendants and their families that include children and old folks who are in dire need of a place to stay. It is the duty of the court to ensure that in the interim period no undue hardship should be caused to the defendants and their families merely for want of giving adequate guarantee.

For the reasons as I have stated above I allowed the defendant's application for an interim injunction with costs.